

1 Frank A. Angileri (*pro hac vice*)
2 Thomas A. Lewry (*pro hac vice*)
3 Marc Lorelli (*pro hac vice*)
4 Christopher C. Smith (SBN 238882)
5 **BROOKS KUSHMAN P.C.**
6 1000 Town Center, 22nd Floor
7 Southfield, MI 48075
8 Phone: (248) 358-4400 / Fax: (248) 358-3351
9 E-Mail: fangileri@brookskushman.com
10 E-Mail: tlewry@brookskushman.com
11 E-Mail: mlorelli@brookskushman.com
12 E-Mail: csmith@brookskushman.com

13 William E. Thomson, Jr. (SBN 47195)
14 **BROOKS KUSHMAN P.C.**
15 6005 S. Figueroa Street, Suite 2080
16 Los Angeles, California 90017-5726
17 Phone: (213) 622-3003 / Fax: (213) 622-3053
18 E-Mail: wthomson@brookskushman.com

19 *Attorneys for Plaintiffs*

20 **UNITED STATES DISTRICT COURT**
21 **NORTHERN DISTRICT OF CALIFORNIA**

22 CHRIMAR SYSTEMS, INC.,
23 d/b/a CMS Technologies and
24 Chrimar Holding Company, LLC,

25 *Plaintiffs,*

26 v.

27 NETGEAR, INC.,

28 *Defendant.*

Case No. 16-cv-00624-SI

**THIRD AMENDED COMPLAINT FOR
PATENT INFRINGEMENT**

JURY TRIAL DEMANDED

1 Plaintiffs Chrimar Systems Inc. d/b/a CMS Technologies (“Chrimar”) and Chrimar
2 Holding Company, LLC (“Holding”) file this Third Amended Complaint against NETGEAR,
3 Inc. (“the Complaint”) for infringement of United States Patent Nos. 8,942,107 (“the ’107
4 Patent”), 8,902,760 (“the ’760 Patent”), 9,019,838 (“the ’838 Patent”), and 9,812,825 (“the ’825
5 Patent”), collectively the “Patents-in-Suit.”

6 **The Parties**

7 1. Chrimar is a Michigan corporation with a place of business located at 36528
8 Grand River Avenue, Suite A-1, Farmington Hills, Michigan 48335.

9 2. Holding is a Texas limited liability company with a place of business located at
10 911 NW Loop 281, Suite 211-30, Longview, Texas 75604.

11 3. Chrimar and Holding are collectively referred to as “Plaintiffs” or “CMS.”

12 4. NETGEAR, Inc. (“NETGEAR”) is a Delaware corporation with its principal
13 place of business located at 350 E. Plumeria Drive, San Jose, California 95134. This Court has
14 personal jurisdiction over NETGEAR.
15

16 **Jurisdiction and Venue**

17 5. This action arises under the patent laws of the United States, 35 U.S.C. § 101 et
18 seq.
19

20 6. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1338(a).

21 7. Venue is proper in this judicial district under 28 U.S.C. §§ 1391 and 1400(b).

22 8. This Court has personal jurisdiction over NETGEAR because NETGEAR has
23 engaged in continuous and systematic activities in the state of California, including in this
24 district.
25
26
27
28

Patents-in-Suit

9. Chrimar is the owner and assignee of the '107 Patent, titled "Piece of Ethernet Terminal Equipment" and Holding is the exclusive licensee of the '107 Patent. CMS owns all substantial rights in the '107 Patent. A true and correct copy of the '107 Patent is attached as Exhibit A.

10. Chrimar is the owner and assignee of the '760 Patent, titled "Network System and Optional Tethers" and Holding is the exclusive licensee of the '760 Patent. CMS owns all substantial rights in the '760 Patent. A true and correct copy of the '760 Patent is attached as Exhibit B.

11. On September 9, 2017, the U.S. Patent and Trademark Office issued a reexamination certificate for the '760 patent confirming the patentability of claims 1-72, cancelling claims 170-172, determining claims 73, 145, 146 and 219 are patentable as amended, and determining claims 74-100, 104-144, 147-169 and 173-218 are patentable as dependent on an amended claim. A copy of the reexamination certificate is attached as Ex. C.

12. Chrimar is the owner and assignee of the '838 Patent, titled "Ethernet Device" and Holding is the exclusive licensee of the '838 Patent. CMS owns all substantial rights in the '838 Patent. A true and correct copy of the '838 Patent is attached as Exhibit D.

13. Chrimar is the owner and assignee of the '825 Patent, titled "Ethernet Device" and Holding is the exclusive licensee of the '825 Patent. CMS owns all substantial rights in the '825 Patent. A true and correct copy of the '825 Patent is attached as Exhibit E.

NETGEAR's Accused Products

14. Upon information and belief, NETGEAR makes, uses, offers to sell, sells, and/or imports Power over Ethernet ("PoE") powered devices ("PDs") that comply with and/or are compatible with the PoE Standards, namely IEEE 802.3af and/or 802.3at.

1 15. Upon information and belief, NETGEAR makes, uses, offers to sell, sells, and/or
2 imports PoE power sourcing equipment (“PSEs”) that comply with and/or are compatible with
3 the PoE Standards, namely IEEE 802.3af and/or 802.3at.

4 16. The Accused PD Products and the Accused PSE Products are collectively the
5 “Accused Products” and are identified, based on current available public information, in the
6 Infringement Contentions served contemporaneously with this Third Amended Complaint and
7 incorporated by reference.

8 17. Upon information and belief, the Accused Products are offered for sale and sold
9 throughout the United States, including within the Northern District of California.

10 18. NETGEAR has purposefully and voluntarily placed the Accused Products into the
11 stream of commerce with the expectation that these products will be purchased and used by end
12 users in the United States, including end users in the Northern District of California.

13 19. NETGEAR provides direct and indirect support concerning the Accused Products
14 to end users, including end users within the Northern District of California.

15
16
17 **Count I**

18 **INFRINGEMENT OF U.S. PATENT NO. 8,942,107**

19 20. CMS incorporates the foregoing by reference as if fully set forth herein.

20 21. NETGEAR has and continues to directly infringe the ’107 Patent in violation of
21 35 U.S.C. § 271(a) by making, using, offering for sale, selling, and/or importing into the United
22 States the Accused PD Products. Based on current available public information, the
23 Infringement Contentions served contemporaneously with this Third Amended Complaint
24 identify the claims infringed and the bases for CMS’s infringement allegations.

25 22. NETGEAR has been on notice of the ’107 Patent since at least as early as July of
26 2015.

1 30. The Accused Products fall within two categories of PoE equipment—PDs, which
2 are devices that receive power via an Ethernet cable (such as a PoE VOIP phone), and PSEs,
3 which are devices connected to the opposite end of the Ethernet cable and send power to the
4 PDs. The Accused PD Products and the Accused PSE Products operate cooperatively to provide
5 PoE. The '760 Patent is a system-level patent that implicates the provision of PoE by the
6 Accused PD and PSE Products in combination.
7

8 31. Each Accused Product complies with and/or is compatible with the PoE
9 Standards, namely IEEE 802.3af and/or 802.3at. More specifically, each Accused Product
10 implements the detection and classification protocols as specified in the PoE Standards.
11

12 32. The detection protocol of the PoE Standards ensures that the Accused PSE
13 Products only send power to PDs. The classification protocol of the PoE Standards ensures that
14 the Accused PSE Products supply the correct power level to the Accused PD Products.
15

16 33. The detection and classification protocol sections of the PoE Standards are
17 explicit—down to the circuit level—as to how these functions must be implemented in the
18 Accused Products.
19

20 34. Each Accused Product includes specialized hardware and circuitry in order to
21 implement the detection and classification protocols of the PoE Standards. Such hardware and
22 circuitry includes, but is not limited to, a PoE controller, a detection circuit path that includes a
23 PoE detection signature resistance, and a classification circuit path that includes a PoE power
24 classification signature resistance.
25

26 35. Each Accused Product is a component of a patented machine, manufacture,
27 combination, or system and constitutes a material part of the invention as claimed in the '760
28 Patent. For example, the '760 Patent is a system-level patent that implicates the detection and
classification protocols of the PoE Standards and each Accused Product includes specialized

1 hardware and circuitry to implement the detection and classification protocols of the PoE
2 Standards.

3 36. Since receiving notice of Plaintiffs' patent rights under the '760 Patent,
4 NETGEAR knows that the Accused Products are especially made or especially adapted for use
5 in a manner that infringes one or more claims of the '760 Patent, as it markets and/or advertises
6 the Accused Products as having PoE capability.

7
8 37. The Accused Products are not a staple article or commodity of commerce suitable
9 for substantial non-infringing use. Each Accused Product incorporates specialized hardware and
10 circuitry to implement the detection and classification protocols of the PoE Standards. The
11 incorporation of this specialized hardware and circuitry serves no function other than to
12 determine whether an Ethernet-connected device is a PoE-compliant device ("detection"), and, if
13 so, the amount of power it is designed to accept ("classification"). There is no other established
14 or practical non-infringing use of the specific specialized hardware and circuitry as required by
15 the PoE Standards and claimed by the '760 Patent.

16
17 38. The fact that the Accused Products may also incorporate other circuitry or
18 functionality that does not implicate the '760 Patent is irrelevant for determining whether the
19 Accused Products have substantial non-infringing uses. *See Ricoh Co. v. Quanta Computer Inc.*,
20 550 F.3d 1325 (Fed. Cir. 2008).

21
22 39. NETGEAR's customers that use the Accused PD or PSE Products in their PoE
23 networks directly infringe the '760 Patent.

24 40. NETGEAR has been on notice of the '760 Patent since at least as early as July of
25 2015.

26 41. NETGEAR's infringement of the '760 Patent has been and continues to be
27 willful.
28

Count IV

INFRINGEMENT OF U.S. PATENT NO. 9,812,825

49. CMS incorporates the foregoing by reference as if fully set forth herein.

50. NETGEAR has and continues to directly infringe the '825 Patent in violation of 35 U.S.C. § 271(a) by making, using, offering for sale, selling, and/or importing into the United States the Accused Products. Based on current available public information, the Infringement Contentions served contemporaneously with this Third Amended Complaint identify the claims infringed and the bases for CMS's infringement allegations.

51. NETGEAR has been on notice of the '825 Patent since at least as early as March of 2019.

52. CMS has been damaged as a result of NETGEAR's infringing conduct described in this Count.

53. NETGEAR's infringement of the '825 has been and continues to be willful.

54. Because NETGEAR's infringement of the '825 has been and continues to be willful, Plaintiffs seek enhanced damages of up to three times the amount found or assessed under 35 U.S.C. § 284.

Additional Allegations

55. CMS has complied with 35 U.S.C. § 287.

Jury Demand

56. CMS requests a trial by jury pursuant to Rule 38 of the Federal Rules of Civil Procedure.

Prayer for Relief

CMS requests that this Court find in its favor and against NETGEAR, and that this Court grant CMS the following relief:

- a. Enter judgment that NETGEAR has infringed the Patents-in-Suit;
- b. Award Plaintiffs damages in an amount adequate to compensate Plaintiffs for NETGEAR's infringement of the Patents-in-Suit, but in no event less than a reasonable royalty in accordance with 35 U.S.C. § 284;
- c. Award Plaintiffs enhanced damages three times the amount of damages found or assessed under 35 U.S.C. § 284;
- d. Award Plaintiffs pre-judgment and post-judgment interest to the full extent allowed under the law, as well as their costs;
- e. Order NETGEAR to pay a reasonable royalty for each future infringement of the Patents-in-Suit;
- f. Declare that this is an exceptional case and award Plaintiffs their reasonable attorneys' fees incurred in this action; and
- g. Award such other relief as the Court may deem appropriate and just under the circumstances.

Dated: February 7, 2020

By: /s/ Frank A. Angileri
 Frank A. Angileri (*pro hac vice*)
 Thomas A. Lewry (*pro hac vice*)
 Marc Lorelli (*pro hac vice*)
 Christopher C. Smith (SBN 238882)
BROOKS KUSHMAN P.C.
 1000 Town Center, 22nd Floor
 Southfield, MI 48075
 Phone: (248) 358-4400 / Fax: (248) 358-3351
 E-Mail: fangileri@brookskushman.com
 E-Mail: tlewry@brookskushman.com
 E-Mail: mlorelli@brookskushman.com
 E-Mail: csmith@brookskushman.com

William E. Thomson, Jr. (SBN 47195)
BROOKS KUSHMAN P.C.
 6005 S. Figueroa Street, Suite 2080
 Los Angeles, California 90017-5726
 Phone: (213) 622-3003 / Fax: (213) 622-3053
 E-Mail: wthomson@brookskushman.com

Attorneys for Plaintiffs